IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FARAD CONTINUATION SHEET.
CIVIL APPLICATION NO.50 OF 2005
IN
APPEAL FROM ORDER ST.NO.606 OF 2005

Vandan Prakashkumar Jani ...Applicant

Vs.

The Municipal Corporation of
Greater Mumbai ...Respondent

CORAM: A.S.OKA,J.
DATE : FEBRUARY 21, 2005.

P.C.:

1. Heard Counsel appearing for the parties. The challenge is to the order dated 29th November 2004 passed by the learned Judge of the City Civil Court by which the Notice of Motion taken out by the Appellant/Plaintiff has been dismissed. The challenge in the suit is to the notice dated 3rd February 1998 issued under Section 351 of Mumbai Municipal Corporation Act, 1888 and the order dated 4th June 1998 passed on the said notice by the Deputy Municipal Commissioner. The unauthorised construction set out in the notice is construction of first floor over the existing ground floor with M.S.Girder and Ladi coba as shown in the sketch annexed to the notice.

2. The learned Counsel for the Appellant submitted that in the year 1989, a notice was issued in respect of the same structure. A reply was submitted by the Appellant and thereafter no action was taken. He submitted that failure to take action on the part of the Respondent on the basis of earlier notice issued in the year 1989 shows that the Respondent-Corporation was satisfied with the legality of the

structure and further action was dropped. He pointed out that a reply was submitted by the Applicant to the notice under Section 351 of M.M.C.Act, 1888 dated 3rd February 1998. In the said reply a contention was raised that the construction was in existence for last 40 years. A reliance was placed on the earlier notice in the said reply. He submitted that the notice was not issued to the landlord.

3. The learned Counsel for the Respondent has supported the impugned order by pointing out that no document in support of the case was produced by the Appellant.

4. I have considered the rival submissions. It is to be noted here that the learned trial Judge has recorded a prima facie finding that the suit is barred by limitation. It is obvious that the finding on issue of limitation can be recorded only after issues are framed and the parties lead evidence. Nevertheless, the learned Trial Judge has taken a prima facie view so far as the limitation is concerned.

5. The learned Judge has also considered the merits of the case. The learned Judge has noted that the Appellant relied upon 23 documents and it was fairly conceded by the Advocate for the Appellant that none of the said documents referred to the first floor structure.

6. In so far as notice issued on 21st March 1989 is concerned, it is to be noted that the said notice is not issued under Section 351 of Mumbai Municipal Corporation Act, 1888 and it was only a preliminary notice calling upon the predecessor of the Appellant to produce the documentary

evidence showing that the shed is authorised or is old.

Considering the nature of the said notice it is impossible to accept the submission of the Counsel for the Appellant that further action was dropped by the Respondent-Corporation.

7. If the reply submitted by the Appellant to the present notice under Section 351 is perused, it is very clear that in the said reply the Appellant did not disclose the name of his alleged landlord and did not contend that the notice should have been issued to the landlord. After considering the documents which were produced along with the reply the order of demolition has been passed by the Deputy Commissioner. It is an admitted position that none of the documents produced in the Trial Court related to the suit structure and therefore it is impossible to record any findings in favour of the Appellant that either the suit structure is authorised or that the suit structure can be tolerated as per the existing policies of the Respondent.

8. As no prima facie case has been made out by the Appellant, order of dismissal of the Notice of Motion was passed by the Trial Court. Hence, there is no merit in the Appeal. Appeal is dismissed with no order as to costs.

9. It is made clear that the Trial Court will decide the suit on its own merit and the observations made by the Trial Court as well as in this order are for limited purpose of considering the prayer for grant of interim relief.

JUDGE.